IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 15700 of 2003

For Approval and Signature:

HON'BLE MR.JUSTICE D.P.BUCH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

PAMAN ALIAS PAVAN NANDLAL SEJWANI (SINDHI)

Versus

COMMISSIONER OF POLICE

Appearance:

1. Special Civil Application No. 15700 of 2003

MR ANIL S DAVE for Petitioner No. 1

MR KAMEN N SHUKLA for Petitioner No. 1

Ms Mita Panchal, AGP for Respondent No. 1-3

CORAM : HON'BLE MR.JUSTICE D.P.BUCH

Date of decision: 23/03/2004

ORAL JUDGEMENT

The petitioner-detenu has preferred this petition

under Article 226 of the Constitution of India for appropriate writ, order or direction for quashing and setting aside an order dated 01.10.2003 passed by respondent No.1 under section 3(2) of the Gujarat Prevention of Anti-social Activities At, 1985 (for short, 'the PASA Act').

2. As per the case of the detaining authority, two offences were registered against the petitioner before Prohibition police station, Western Wing being C.R. No.402/2003 dated 14.3.2003 and Naranpura police station being C.R. No.5227/2003 dated 1.8.2003. It was alleged that he was found in possession of illicit liquor without pass or permit and thereby he has committed the aforesaid offences. The detaining authority also considered two statements of unnamed witnesses. On the consideration of the above materials, the detaining authority found that the petitioner was a bootlegger and, therefore, he was required to be detained. Accordingly the impugned order of detention order was passed against the petitioner. The petitioner has challenged the above order on several grounds. One of the grounds is that though the representation of the petitioner was submitted to the State Government, there was a delay in disposal of the said representation. That the documents shown in the representation were not supplied to the petitioner despite demand. When the alleged activities of the petitioner did not amount to a threat to public order, the order of detention cannot be said to be legal and valid and requires to be set aside. The petitioner has, therefore, prayed to quash and set aside the impugned order of detention and he may be set at liberty forthwith.

2. On receiving the petition, rule was issued and in response to the service of notice of rule, Ms. Mita S Panchal, learned AGP has appeared. I have heard the learned Advocates for the parties. Learned AGP has also submitted affidavit of the detaining officer which is taken on record.

3. Learned Advocate for the petitioner has contended that the petitioner has submitted his representation to the State Government on 14.10.2003. It is placed at page 97. It is their argument that though the representation was dated 14.10.2003 and though it was received by the office of the Government on 15.10.2003, it was forwarded to the concerned Secretary on 17.10.2003 and the said Secretary had considered and decided the same on 20.10.2003. That therefore, there was a delay of three days in dealing with and deciding the said

representation. That the said delay has not been explained and, therefore, continuation of the detention of the petitioner stands vitiated.

4. The representation dated 14.10.2003 can be gathered at page 97. It is not much in dispute that the said representation was received by the Government on 15.10.2003. It was sent to the concerned Secretary on 17.10.2003. Thereafter also the representation did not receive any attention for two days and the concerned Secretary had dealt with and decided the same on 20.10.2003. On the one hand there was delay of one day in forwarding the representation to concerned Secretary, on the other hand, the said Secretary also took three days' time in deciding the said representation. The delay of about four days has not been explained by way of filing counter affidavit. In that view of the matter, it is well settled that the delay in disposal of representation adversely affects the right of the detenu and therefore, the further continuation of detention cannot be sustained in the eye of law. In this respect it would be worthwhile to refer to a decision of this Court in Special Civil application No.12634 of 2000 decided on 19.6.2001 (Hon'ble Mr Justice H K Rathod) wherein this Court held that non-explanation of one day's delay in considering the representation submitted by the petitioner had adversely affected the legal right of the petitioner of making an effective representation to the concerned authority and therefore, the order of detention was quashed and set aside.

5. Learned Advocate for the petitioner has taken up a contention that the detention order has been based on filing of two prohibition cases and statements of unnamed witnesses referred to hereinabove. He also states that registration of the said two offences and statements of two unnamed witnesses go to show that these are stray incidents which may amount to a threat to law and order situation and it may not amount to a threat to public order. On this aspect of the case, the learned Advocate for the petitioner has relied upon a decision of this court dated 26.2.2004 in Special Civil Application No.16542/2003.(Coram: Hon'ble Mr Justice N G Nandi). There also a couple of offences under the Prohibition Act were registered against the detenu. There were some statements of unnamed witnesses recorded against the petitioner. On appreciation of the above material, this court came to a decision that these are stray incidents which may amount to a threat to law and order situation but it does not amount to a threat to public order. While so doing, this Court was required to consider a

decision in the case of Kanuji S Zala v. State of Gujarat, reported in 2000 (4) GLR 3256. It would be worthwhile to refer relevant portion of para 5 of the said judgment as under:

"para 5. What is required to be considered in such cases is whether there was credible material before the detaining authority on the basis of which a reasonable inference could have been drawn as regards the adverse effect on the maintenance of public order as defined by the Act."

6. On appreciating the materials on record and on considering the above judgment, this court has recorded a finding that the alleged activities of the petitioner may amount to a threat to law and order situation but it does not amount to a threat public order. On above consideration, this court has quashed and set aside the impugned detention order. Here also the facts are identical. Two offences under the Prohibition Act, 1949 registered against the petitioner and two statements of unnamed witnesses were also considered. However, on considering the above material, it might amount to a threat to law and order situation but it does not amount to a threat to public order. In that view of the matter, the order of detention cannot be sustained in the eye of law. Therefore, on following the above principles, this petition is required to be allowed and the impugned order of detention is required to be quashed and set aside.

7. For the foregoing reasons, this petition is allowed. The impugned order dated 01.10.2003 passed by respondent No.1 in exercise of powers under section 3(2) of the PASA Act detaining the present petitioner, is ordered to be set aside. The detenu is ordered to be set at liberty forthwith, if no longer required in any other case. Rule is made absolute to the aforesaid extent. No order as to costs. D.S. permitted.

[D P Buch, J.]
msp